

letter of findings: 01-20170099.LOF
Income Tax
For the Year 2013

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual established that he was not domiciled in Indiana during 2013. Although he jointly owned property with his partner, it was the individual's partner that remained in Indiana and she took the Indiana Homestead Exemption. Therefore, the Department's assessment for 2013 Indiana income tax was proven incorrect. Penalty was also abated.

ISSUES

I. Income Tax—Residency.

Authority: IC § 6-1.1-12-37; IC § 6-3-1-12; IC § 6-8.1-5-1; *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#); [50 IAC 24-2-5](#).

Taxpayer protests the imposition of Indiana individual income tax.

II. Tax Administration—Penalty.

Authority: IC § 6-8.1-10-3.

Taxpayer protests the imposition of a penalty.

STATEMENT OF FACTS

Taxpayer is an individual. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for tax year 2013 and that Taxpayer neither filed a 2013 Indiana individual income tax return nor paid any 2013 Indiana individual income tax. Taxpayer protested the Department's determination of residency and the imposition of a penalty. An administrative telephone hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax—Residency.

DISCUSSION

Taxpayer protests the imposition of Indiana adjusted gross income tax for the tax year 2013. The Department determined that Taxpayer was an Indiana resident for 2013 because he was listed as the owner of an Indiana residence upon which the Indiana Homestead Exemption was claimed. Taxpayer argues that he was a resident of a different state in 2013, and that his partner, as joint owner, claimed the homestead exemption. Therefore, Taxpayer argues, he did not need to file a 2013 Indiana income tax return nor did he owe any Indiana income tax for that year.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867

N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Pursuant to IC § 6-3-1-12, a resident is defined as follows:

The term "resident" includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

In other words, "a resident" includes individuals who are domiciled in Indiana and/or maintain a permanent place of residence in Indiana and then spend more than 183 days in Indiana. In this case, Taxpayer was able to establish that he did not spend more than 183 days in Indiana during 2013. Therefore, in order to be considered a resident of Indiana during 2013, Taxpayer must have been domiciled here.

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

"Domicile" Defined. For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, *if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.*

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. *Relevant facts in determining whether a new domicile has been established include, but are not limited to:*

- (1) *Purchasing or renting residential property*
 - (2) *Registering to vote*
 - (3) *Seeking elective office*
 - (4) *Filing a resident state income tax return or complying with the homestead laws of a state*
 - (5) *Receiving public assistance*
 - (6) *Titling and registering a motor vehicle*
 - (7) *Preparing a new last will and testament which includes the state of domicile.*
- (*Emphasis added*).

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have intent to remain at that non-Indiana address.

The Indiana Supreme Court considered the issue of the meaning of "domicile" in *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), in which the court provided:

Domicile means "the place where a person has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning." *Turner*, 241 Ind. at 80, 168 N.E.2d at 196. Domicile can be established in one of three ways: "domicile of origin or birth, domicile by choice, and domicile by operation of law." *Croop*, 199 Ind. at 271, 157 N.E. at 278. The domicile of an unemancipated minor is determined by the domicile of his parents. *Hiestand v. Kuns* (1847), 8 Blackf. 345.

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and ... he does not lose the one until he has gained one in another place." *Scott*, 171 Ind. at 361, 86 N.E. at 413.

Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact.... **[T]here must be the intention to**

abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." Rogers, 226 Ind. at 35-36, 77 N.E.2d at 595-96. *Id.* at 1317. (Emphasis added).

Therefore, an examination of Taxpayer's acts is required to determine if Taxpayer had the intention to acquire a new domicile outside of Indiana and to abandon his domicile in Indiana.

A review of the domiciliary criteria listed under [45 IAC 3.1-1-22](#) is illuminating in this matter. Taxpayer provided documentation showing that he left Indiana in late 2010 and began employment in January of 2011 in another state. Also in early 2011, Taxpayer purchased a home in another state and in 2012 Taxpayer leased a vehicle in that other state. In 2012 Taxpayer's Indiana home was listed for sale. Taxpayer also provided a letter from the other state's voter registrar showing that he was registered to vote in that other state "on February 15, 2011 and was an active voter until March 25, 2014." Taxpayer also provided a copy of the other state's Department of Motor Vehicles registration certificate for a vehicle that was issued on "02/18/2013." Property tax information for the home in the other state was also provided, among other documents. Taxpayer has clearly met some of the factors listed under [45 IAC 3.1-1-22](#) which are used in determining whether or not a new domicile has been created.

However, prior to moving to the other state, Taxpayer jointly owned a home in Indiana and an Indiana homestead exemption upon that home was claimed. IC § 6-1.1-12-37(a)(2) states in relevant part:

"Homestead" means an individual's principal place of residence:

(A) that is located in Indiana;

(B) that:

(i) the individual owns;

(ii) the individual is buying under a contract; recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence;

(iii) the individual is entitled to occupy as a tenant-stockholder (as defined in 26 U.S.C. 216) of a cooperative housing corporation (as defined in 26 U.S.C. 216); or

(iv) is a residence described in section 17.9 of this chapter that is owned by a trust if the individual is an individual described in section 17.9 of this chapter; and

(C) that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.

Except as provided in subsection (k), the term does not include property owned by a corporation, partnership, limited liability company, or other entity not described in this subdivision.

(Emphasis added).

Additionally, when a taxpayer claims the homestead exemption, the dwelling has to be their principal place of residence, as provided by IC § 6-1.1-12-37(a)(2). [50 IAC 24-2-5](#) defines that as:

"Principal place of residence" means an individual's true, fixed, permanent home to which the individual has the intention of returning after an absence.

And, as the court in *Bayh* explained, "A change of domicile requires an actual moving with an intent to go to a given place and remain there." *Bayh*, at 596. As will be seen below, Taxpayer actually moved to another state and has established that at the time of the move his intent was to remain in that other state despite the fact that Taxpayer did eventually move back to Indiana.

Taxpayer's protest letter states in relevant part:

[The Department's] sole basis for claiming [Taxpayer] was domiciled in Indiana is the fact a homestead exemption was taken on property in [Taxpayer's] name, however, said property is owned jointly with [Taxpayer's partner] who has in fact lived in the home as her personal residence since 1991. As explained in earlier correspondence, [Taxpayer] resided and maintained his domicile in [another state] for the full year of 2013.

As noted, Taxpayer moved back to Indiana in 2014. However, Taxpayer's reason for returning to Indiana was the fact that his employment contract was not renewed in the other state. Taxpayer provided the Department with corporate board minutes from late 2013 regarding his employment contract not being renewed. Taxpayer also stated in his protest letter that the Indiana home would have been listed for sale even earlier than it was but that his partner was diagnosed with cancer and she "was undergoing treatment" which would have made a move for her "too difficult at that time." Taxpayer also states, "[o]nce she had recovered from her treatments the house was

listed." The Indiana house was, per Taxpayer, placed on the market in 2012, and was taken off the market once his employment situation changed in the other state. Taxpayer has also sufficiently established that it was his partner that remained in Indiana and that she continued to take the homestead exemption on the jointly owned home.

The *Bayh* case shows that to change one's domicile there must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish the change of domicile. In the present case Taxpayer has sufficiently shown that he intended to abandon his Indiana domicile by establishing a new domicile in the other state. Taxpayer also, at the time, intended to remain in the other state. Taxpayer took steps to establish a new residence and domicile outside of Indiana by, among other things, buying a home in another state, registering to vote in another state, and listing his Indiana home for sale. Regarding the Indiana home, Taxpayer has sufficiently explained the homestead exemption issue. In conclusion, Taxpayer has provided the Department with documentation to meet his burden of proof found in IC § 6-8.1-5-1(c). Taxpayer's protest is sustained.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration—Penalty.

DISCUSSION

Taxpayer protests the imposition of penalties pursuant to IC § 6-8.1-10-3, which provides:

- (a) If a person fails to file a return on or before the due date, the department shall send him a notice, by United States mail, stating that he has thirty (30) days from the date the notice is mailed to file the return. If the person does not file the return within the thirty (30) day period, the department may prepare a return for him, based on the best information available to the department. The department prepared return is prima facie correct.
- (b) If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20[percent]) of the unpaid tax. In the absence of fraud, the penalty imposed under this section is in place of and not in addition to the penalties imposed under any other section.

In this case, as outlined in **Issue I** *supra*, Taxpayer has been sustained in whole on the imposition of Indiana income tax for 2013, thus the imposition of penalty is moot.

FINDING

Taxpayer's protest of the imposition of penalty is sustained.

SUMMARY

Taxpayer's protest regarding the imposition of Indiana adjusted gross income tax is sustained. Taxpayer's protest regarding the imposition of penalty is sustained.

Posted: 11/29/2017 by Legislative Services Agency
An [html](#) version of this document.